

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

RICHARD HUBBARD, III, et al.,)	CASE NO. 1:18 CV 2252
)	
Plaintiffs,)	JUDGE DAN AARON POLSTER
)	
vs.)	<u>MINUTES ORDER</u>
)	
CITY OF EUCLID, et al.,)	
)	
Defendants.)	

On September 6, 2018, Plaintiffs Richard Hubbard, III and Yolimar Tirado, represented by Attorney Christopher McNeal, filed this civil rights case against Defendant City of Euclid, and Defendant Euclid Police Officers Michael Amiott, Matt Gilmer, and Kirk Pavkov in the Cuyahoga County Common Pleas Court. The case arises from Plaintiffs' stop and arrest by the Defendant Officers on the morning of August 12, 2017. Doc #: 1-1. On September 28, 2018, Defendants removed the case to federal court based on the Court's original jurisdiction over the federal claims, and the Court's supplemental jurisdiction over the state law claims. Doc #: 1.

After Defendants' answers were filed, the Court issued a Case Management Conference Scheduling Order on October 25, 2018, scheduling a Case Management Conference (CMC) on December 13, 2018. Doc #: 5. The Scheduling Order required the counsel and parties "to attend this [CMC] in person." *Id.* at 1. The Scheduling Order also addressed the Planning Meeting and the Report of the Planning Meeting.

The agenda for the CMC is set forth by Local Rule 16.3(b)(2). Both federal and local civil rules require counsel of record and all unrepresented parties to confer

with one another well in advance of the CMC in an effort to agree in good faith upon the items listed in the agenda, including a track assignment and discovery schedule. See Local Rule 16.3(b)(3); Fed. R. Civ. P. 26(f). This conference is called the “Planning Meeting.” The local and federal civil rules place responsibility for arranging the Planning Meeting jointly on the parties; however, to avoid confusion, the undersigned places the ultimate burden of arranging the Planning Meeting on counsel for Plaintiff(s).

Id. at 2. The Scheduling Order went on to discuss topics the parties must consider in preparing for the CMC, e.g., the LR 16.3(b)(2) agenda items, e-discovery, a demand by Plaintiff “with a written description and monetary breakdown of the damages claimed,” Defendant’s response with a counteroffer – “all well before the CMC.” *Id.* at 2-3. The Scheduling Order attached a form entitled “Report of the Parties’ Planning Meeting” with the following instructions.

Counsel shall jointly report the results of the Planning Meeting to the Court by filling in the form and adding the information about the demand, the counteroffer and E-discovery (if applicable). After counsel sign the Report, Plaintiff’s counsel shall file the Report and fax a copy of it to Chambers . . . no later than **12:00 p.m. on 12/11/2018.**

Id. at 3 (referring to *id.* at 16-18).

On December 11, 2018, the City’s counsel Kelley A. Sweeney and the Individual Defendants’ counsel Amily A. Imbrogno filed a document entitled “Defendants’ Proposed Report of Parties Planning Meeting Under Fed. R. Civ. P. 26(f) and Local Rule 16.3(b)” (Report). Doc #: 9. Notably missing from the Report was Attorney McNeal’s attendance at the Planning Meeting. *Id.* Consequently, the Court contacted defense counsel due to the apparent deficiency in the Report, i.e., the lack of Attorney McNeal’s participation in the Planning Meeting. Defense counsel responded that despite multiple attempts to contact Attorney McNeal via email and telephone, he failed to respond. 12/12/2018 Non-Document Order. The Court then emailed all counsel extending the deadline to 12:00 noon on December 12, 2018 to file a

complete Report. *Id.*

On December 12, 2018, the Court issued a non-document order reflecting what had occurred and noting that, as of 3:06 p.m. that day, Attorney McNeal had not responded to Defense counsel or the Court. Consequently, the Court ordered Plaintiffs and Attorney McNeal to appear at the December 13 CMC “with a written explanation as to why he had failed to respond or otherwise participate in this litigation,” concluding “Failure to appear will result in a dismissal with prejudice.” *Id.*

On December 13, 2018, the following persons appeared for the 9:00 a.m. CMC: Individual Defendants Amiott, Gilmer and Pavkov with their counsel James A. Climer, and Defendant City of Euclid representative Kelley Sweeney and her counsel, Amily Imbrogno. The Court, Defense counsel and clients waited until 9:45 a.m. for Plaintiffs and Attorney McNeal to arrive. They did not. Accordingly, the Court advised Defendants and their counsel that it would dismiss the case with prejudice.

At approximately 2:00 p.m. that same day, Attorney McNeal contacted the Court and spoke with a member of the Court’s staff. Attorney McNeal stated that he had not received the earlier emails regarding the CMC and was on his way to the courthouse to speak with Judge Polster. Attorney McNeal and his paralegal arrived at Judge Polster’s chambers at around 3:30 p.m. Judge Polster spoke briefly with them regarding their absence from the CMC earlier. Judge Polster informed Attorney McNeal that the Court was going to schedule an evidentiary hearing regarding Attorney McNeal’s conduct. The Court then called counsel for the Individual Defendants, Amily Imbrogno, to schedule the hearing. During the teleconference, the Court advised the parties that, should the Court decide not to dismiss the case, it will order Attorney

McNeal to pay all costs of the parties and lawyers of attending the CMC. The hearing is scheduled for **December 19, 2018 at 9:00 a.m. in Courtroom 18B**. All clients must attend the hearing. Attorney McNeal is hereby **ORDERED** to contact counsel for the City of Euclid and the Individual Defendants prior to this hearing to complete the planning report as required by the Court's CMC Order. The parties should be prepared to conduct the CMC after the evidentiary hearing should the Court decide not to dismiss this case.

IT IS SO ORDERED.

/s/ Dan A. Polster December 13, 2018
Dan Aaron Polster
United States District Judge